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Attorney Docket No: 20341-68796
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James M. KAIN Confirmation No. 6018
Serial No.: 10/032,633 Art Unit: 3636
Filed: October 19, 2001 Examiner: Garrett, Erika P.
For: JUVENILE SEAT CUP HOLDER

RESPONSE TO OFFICE ACTION MAILED JANUARY 14, 2004

Honorable Commissioner for
Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the office action dated January 14, 2004.

The above-noted office action was recently received and in view of the following comments it is believed that the office action was sent in error.

The office action is not signed by an examiner. No person to contact is even named. For at least this reason withdrawal of the office action, or at the very least, resending the office action restarting the period is requested.

The office action states that "[t]he appellant needs to explain why the claims of the group are believed to be separately patentable. Merely pointing out the differences in what the claims cover is not an argument as to why the claims are separately patentable (see MPEP 1206 and 37 CFR 1.192(c)(7))."

The brief filed November 12, 2003 at pages 3-11 provides a separate discussion for each claim or group of claims. In each separate discussion the claimed limitation(s) peculiar to that claim or group is identified and it is explained how the prior art is not anticipatory of the identified limitation(s). Nothing more is required by 37 CFR 1.192(c)(7). For at least this additional reason the appeal brief is proper and the office action dated January 14, 2004 should be withdrawn.

37 CFR 1.192(c)(7) provides that "the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on that claim alone unless a statement is included that the claims of the group do not stand or fall together and... the appellant explains why the claims of the group are believed to be separately patentable." This provision clearly leaves the determination and consequences of whether appellant has explained why the claims of the group are believed to be separately patentable to the Board. The January 14, 2004 communication does not appear to be from the Board and for this additional reason appears to be improper.

For the above reason acknowledgement of withdrawal of the office action mailed January 14, 2004 is, respectfully, requested. If necessary this communication may be treated as a petition under 37 CFR 1.181.

If there are any issues remaining to be resolved, the examiner is invited to telephone the undersigned (at 202-371-6348) so that such issues can be promptly resolved.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341-68796).

Respectfully submitted,
BARNES & THORNBURG



Richard B. Lazarus
Reg. No. 48,215